



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: A.R.E. Manufacturing Company, Inc.
File: B-224086.4
Date: April 15, 1987

DIGEST

1. Protester's technical proposal under step one of two-step sealed bid solicitation properly was rejected as technically unacceptable where, after the opportunity to submit clarifications, the contracting agency reasonably determined the proposal required a major rewrite to demonstrate its ability to meet the solicitation's stated requirements.
2. To support allegations of agency bias in evaluating technical proposals, the record must contain not only "hard facts" showing bias but evidence of unequal treatment unfairly affecting the protester's competitive position.

DECISION

A.R.E. Manufacturing Company, Inc. protests the rejection of its proposal as clarified under request for technical proposals (RFTP) No. N00104-86-R-ZU62, issued by the Navy under step one of a two-step sealed bidding procurement for ship-board self-contained air conditioners. The Navy initially rejected A.R.E.'s proposal without requesting clarifications or conducting discussions, and A.R.E. protested the rejection to this Office. We sustained the protest in A.R.E. Manufacturing Co. Inc., B-224086, Oct. 6, 1986, 86-2 CPD ¶ 395, because the proposal's deficiencies cited by the Navy did not indicate that the proposal was technically unacceptable as opposed to being merely inferior or capable of being made acceptable. We therefore recommended that the Navy reevaluate A.R.E.'s proposal after requesting clarifications. The Navy followed our recommendation and issued 39 questions requesting clarification of the A.R.E. proposal. The agency determined that A.R.E.'s responses showed that its initial proposal could not have been made acceptable except by a major engineering effort significantly affecting many aspects of the proposal. Accordingly, the Navy rejected the proposal as technically unacceptable. A.R.E. now alleges that the Navy was biased against A.R.E. and intended not to make award to A.R.E. in any event.

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We deny the protest.

The protester does not specifically dispute the technical grounds upon which the Navy based its decision to reject the clarified A.R.E. proposal. The protester's position is that the agency is biased against it. This is in part based on Message No. R-032016Z, October 1986, from the Commander Naval Sea Systems Command advising procuring activities of safety and quality problems with air conditioners previously supplied by A.R.E. and another manufacturer. The message includes a request that contracts for parts and equipment not be awarded to either A.R.E. or the other manufacturer pending resolution of the problems, which are currently under investigation. It is not disputed that the Navy engineer who initiated the message is responsible for reviewing compliance with air conditioner contracts and also served as an evaluator of A.R.E.'s proposal.

In initially rejecting A.R.E.'s proposal, the Navy essentially determined that the proposal included certain unacceptable design characteristics and omitted required supporting data to such an extent that it could not be shown to meet the RFTP's requirements except through major revisions reflecting a significant engineering effort. The Navy's report on A.R.E.'s prior protest, however, did not document or explain in detail the effect of the individual deficiencies on the overall system, and it therefore was not apparent from the record whether A.R.E.'s proposal needed only minor design changes and readily available supporting data to be made acceptable.

Now that A.R.E. has been permitted to clarify its proposal, the agency has concluded that the clarifications submitted by A.R.E. contained numerous major design changes and included insufficient data to fully evaluate the design's compliance with stated performance characteristics. For example, A.R.E.'s clarifications indicated that to correct an apparently minor deviation from the specification's requirement for a minimum condenser head depth,^{1/} A.R.E. proposed to add four extra condenser tubes to maintain rated capacity. The clarification stated that these extra tubes compensate for the reduced length from tube sheet to tube sheet. In the absence of data showing this to be the case,

^{1/} The RFTP specified that the head depth must not be less than one-half the inside diameter of the head measured parallel to the tube sheets which hold the condenser tubes. The purpose of this requirement was to minimize sea water turbulence in the condenser which erodes tube sheets and tube ends.

however, it is also, according to the agency, possible that the design change will effect the heat-transfer characteristics of the condenser, requiring further changes to other components of the system. As a further example, A.R.E.'s supporting data for its condenser contained in its original proposal indicated that the condenser tubes did not meet the RFTP requirement for .049 inch minimum wall thickness. In order to correct this defect A.R.E. now indicates that it will add condenser tubes, decrease condenser tube length and will alter the sea water flow rate, the effective surface area and the tube velocities. In short, the revision will necessitate a major redesign of the condenser, one of the system's three major components.

The evaluation of a technical proposal received in response to an RFTP involves the considered judgment of the contracting agency, and our review is limited to the question of whether the evaluation was reasonable. ICSD Corp., B-222542, July 23, 1986, 86-2 CPD ¶ 97. A proposal properly is rejected where the agency reasonably determines that additional changes and material to make the proposal acceptable would constitute a major revision. Id. In view of the fact that the protester has not supplied any information specifically refuting the Navy's specific technical conclusions in each area, we have no basis upon which to object to the Navy's evaluation of A.R.E.'s technical proposal as clarified. --

Further, we do not agree with the protester that the Navy's message concerning problems with existing A.R.E. equipment shows that the evaluation was necessarily biased. Where, as here, a protester alleges bias in the agency's evaluation it bears a heavy burden since we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. A&A Realty, Inc., B-222139, June 20, 1986, 86-1 CPD ¶ 575. A protester must produce "hard facts" showing bias, and it must further be shown that the bias was translated into action which unfairly affected the protester's competitive position; we will not find an evaluation to be biased or arbitrary if the record indicates a reasonable basis for it. Id. There is nothing in the record to indicate that the evaluators' conclusions regarding the A.R.E. proposal here were in any way influenced by the cited message. In fact, we have concluded that the record shows that the evaluation was reasonable.

A.R.E. also alleges that the Navy subjected A.R.E.'s proposal to greater scrutiny than other proposals, but does not detail a single instance of the alleged unequal treatment. Absent detailed instances of alleged unequal treatment, we regard

the protester's allegation as mere speculation. See Sage
Diagnostics, B-222427, July 21, 1986, 86-2 CPD ¶ 85.

The protest is denied.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel